IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 699 OF 2003

IN

SUIT NO.3164 OF 1994

Suman Babu Thakur & Ors. .. Plaintiffs

vs.

Rita Domnic D'Mello

& Ors. .. Defendants.

And

Babu Gosha Thakur & Ors. .. Applicants.

Mr. P.A. Sarwankar i/by G.S. Bhat

for the plaintiffs.

CORAM : S.U.KAMDAR, J.

DATE : 8th September, 2005.

P.C.

. The present notice of motion is taken out for setting aside the order dated 17.11.1999 passed by the Prothonotary and Senior Master dismissing the suit for want of effecting service on the defendants. The plaintiffs filed the suit on 7.7.1994 and obtained an ad-interim order. The ad-interim order continued and the suit was not served on the defendants. In that view of the matter, the suit has been dismissed for want of service. After the period of four years the present notice of motion for restoration of the suit is

taken out. I find no ground whatsoever for restoring the suit. The only ground given in the affidavit in support is that the only educated person was wife of the applicant no. 1 and she died on 25.1.2002 and in that view of the matter the writ of summons could not be served. However with a view to give an opportunity to the plaintiffs I allow the motion subject to the condition that they will pay cost quantified at Rs. 15,000/- to the Maharashtra State Legal Services Authority. The defendants are served. The reply is filed. However, none appears on behalf of the defendants. Motion made absolute in terms of prayer clause (a) subject to the payment of cost. Cost is condition precedent. Cost to be paid within a period of two weeks.

2. Ad-interim order stands vacated. The learned counsel for the plaintiffs seeks time to deposit Rs. 20,000/- in Court. Time is extended for a period of three weeks.

3. Motion disposed of accordingly. No order as to costs.